

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

HANSON AGGREGATES BMC, INC.

and

**Cases 04-CA-037998
04-CA-069822**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 542, AFL-CIO**

DECISION AND ORDER

Statement of the Cases

On June 3, 2013, the National Labor Relations Board issued a Decision and Order in this proceeding approving a Formal Settlement Stipulation entered into by Hanson Aggregates BMC, Inc. (the Respondent) and the then-Acting General Counsel of the National Labor Relations Board over the objections of International Union of Operating Engineers Local 542, AFL-CIO (the Union or Charging Party). Thereafter, the Union filed a motion for reconsideration of the Decision and Order, which the Board denied on June 28, 2013. At the time of the Decision and Order and the denial of the motion for reconsideration, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). Thereafter, on July 2, 2014, the Union filed with the Board a document which the Board construed as a motion for reconsideration of its June 3, 2013 Decision and Order and its June 28, 2013 denial of the earlier motion for reconsideration, in light of *Noel Canning*. By separate Order on this date, the Board granted the Union's July 2, 2014 motion for reconsideration.

The National Labor Relations Board has delegated its authority in both proceedings to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the Formal Settlement Stipulation in light of the Union's objections, and have determined that the parties' stipulation should be approved. Accordingly, we issue the following Decision and Order.

On January 16, 2013, the Respondent and the then-Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals.¹ The

¹ The Charging Party, International Union of Operating Engineers Local 542, AFL-CIO refused to enter into the Formal Settlement Stipulation. On February 14, 2013, the Union filed a statement in opposition to the settlement with the Board. We have

parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

The Respondent is a Delaware corporation with a quarry in Penns Park, Pennsylvania (the Quarry), and is engaged in extracting and processing crushed stone and in manufacturing bituminous asphalt.

In conducting its business operations during the year preceding the formal settlement stipulation, and on annual basis, the Respondent has sold and shipped goods valued in excess of \$50,000 directly to points located outside the Commonwealth of Pennsylvania.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

At all material times, International Union of Operating Engineers Local 542, AFL-CIO, the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

3. The bargaining unit

The following employees of the Respondent at the Quarry, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

carefully considered the Union's position and we find that the Formal Settlement Stipulation effectuates the policies of the Act.

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

At all times since September 9, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the Respondent, Hanson Aggregates BMC, Inc., Penns Park, Pennsylvania, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Threatening to discharge employees because they engage in Union activity.
- (b) Threatening employees with unspecified reprisals if they engage in Union activity.
- (c) Threatening to sue employees and take back money the Respondent has paid to them if they engage in Union activity.
- (d) Telling employees that they should quit if they do not like the Respondent.
- (e) Suspending its employees or in any other manner discriminating in regard to their hire or tenure of employment or other term or condition of employment in order to discourage them from supporting International Union of Operating Engineers Local 542, AFL-CIO, or any other labor organization.
- (f) Implementing a compensation plan for unit employees scheduled to work on a day when the Respondent curtails its operations due to a weather emergency without first giving the Union notice and a sufficient opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.
- (g) Implementing new terms and conditions of employment of unit employees without first giving the Union notice and a sufficient opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.
- (h) In any other manner, interfering with, restraining or coercing its employees in the exercise of their right to self-organization: to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through

representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the Board's Order, remove from James Quarles's files any reference to the suspension of James Quarles and within three days thereafter, notify James Quarles, in writing, that this had been done and that the suspension will not be used against him in any way.

(b) Make James Quarles whole for any loss of pay he may have suffered by reason of his suspension, by payment to him in the total amount of \$375.36 representing \$369.36 backpay and \$6.00 interest.

(c) Make the following employees whole for any loss employees may have suffered as a result of the Respondent's unilaterally implemented compensation plan of September 9, 2011, by payment or vacation restoration in the manner set forth next to the employee's name:

Name	Total Amount	Backpay	Interest
Robert Ashton	\$127.24	\$122.57	\$4.67
Musaali Bond	\$145.42	\$140.08	\$5.34
Donald Edwards	\$115.62	\$111.37	\$4.25
Donald Filkins	\$176.23	\$169.76	\$6.47
Gary Hale	\$115.62	\$111.37	\$4.25
Dennis Hellyer	\$127.24	\$122.57	\$4.67
Victor Morrison	\$138.80	\$133.70	\$5.10
Michael Murchison	\$115.62	\$111.37	\$4.25
Donald Pierce	\$145.42	\$140.08	\$5.34
Christopher Schane	\$115.62	\$111.37	\$4.25
Clarence Sooby	\$127.24	\$122.57	\$4.67
Paul Spencer	\$127.24	\$122.57	\$4.67
Richard Fitch	Restore 8 hours of vacation leave		
Darlene Foerster	Restore 8 hours of vacation leave		
Klaus Frede	Restore 8 hours of vacation leave		
Joseph Rainey	Restore 7 hours of vacation leave		
John Ricketts	Restore 7 hours of vacation leave		
Kevin Solt	Restore 7 hours of vacation leave		
Robert Weber	Restore 8 hours of vacation leave		
Matthew Williams	Restore 7 hours of vacation leave		

(d) Within 14 days after service by the Region, post copies of the attached Notice marked as "Appendix" at its facility in Penns Park, Pennsylvania. Copies of the Notice,

on forms provided by the Regional Director for Region Four, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification, on a form provided by the Region, attesting to the steps the Respondent has taken to comply herewith.

Dated, Washington, D.C., August 28, 2015.

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose representatives to bargain with us on your behalf;
Act together with other employees for your benefit and
protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT suspend you because you support International Union of Operating Engineers Local 542, AFL-CIO (the Union).

WE WILL NOT threaten to fire you because you engage in Union activity.

WE WILL NOT threaten you with unspecified reprisals because you engage in Union activity.

WE WILL NOT threaten to sue you and take back money we have paid to you because you engage in Union activity.

WE WILL NOT tell you that you should quit if you do not like us.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of our employees in the unit described below by unilaterally implementing new terms and conditions of employment absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and opportunity to bargain.

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and Maintenance employees, excluding all other employees, including Temporary employees, Laboratory Technicians, office clerical Employees, managers, guards and supervisors as defined in the Act.

WE WILL NOT implement a compensation plan for unit employees scheduled to work on a day when we curtail operations due to weather conditions without first giving the Union notice and a sufficient opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

WE WILL NOT, in any manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act. Some of those rights are described at the top of this notice.

WE WILL make James Quarles whole for any loss of pay he may have suffered because we suspended him.

WE WILL remove from James Quarles' files any reference to his suspension, and **WE WILL** notify him in writing that this has been done and that the suspension will not be used against him in any way.

WE WILL make the employees listed on the attached chart whole for any loss the employee may have suffered as a result of our unilaterally implemented compensation plan for September 9, 2011, by payment or vacation restoration in the manner set forth next to the employee's name on the chart.

HANSON AGGREGATED BMC, INC.

(Employer)

Dated: _____ By: _____
(Representative) (Title)

Employee	Status on September 8	Compensation for September 8	Pay Rate	Make Whole	Backpay	Each Employee's Total w/Interest
Williams, Matthew	Showed up, sent home	Vacation day and one-hr show-up	\$19.10	Restore 7 hour vacation	0	0.00
Solt, Kevin	Showed up, sent home	Vacation day and one-hr show-up	\$20.43	Restore 7 hour vacation	0	0.00
Rainey, Joseph	Showed up, sent home	Vacation day and one-hr show-up	\$20.43	Restore 7 hour vacation	0	0.00
Ricketts, John	Showed up, sent home	Vacation day and one-hr show-up	\$20.43	Restore 7 hour vacation	0	0.00
Ashton, Robert	Showed up, sent home	One-hr show-up pay only	\$17.51	Pay 7	\$122.57	\$127.24
Sooby, Clarence	Showed up, sent home	One-hr show-up pay only	\$17.51	Pay 7	\$122.57	\$127.24
Edwards, Donald	Showed up, sent home	One-hr show-up pay only	\$15.91	Pay 7	\$111.37	\$115.62
Spencer, Paul	Showed up, sent home	One-hr show-up pay only	\$17.51	Pay 7	\$122.57	\$127.24
Hellyer, Dennis	Showed up, sent home	One-hr show-up pay only	\$17.51	Pay 7	\$122.57	\$127.24
Morrison, Victor	Showed up, sent home	One-hr show-up pay only	\$19.10	Pay 7	\$133.70	\$138.80
Murchison, Michael	Showed up, sent home	One-hr show-up pay only	\$15.91	Pay 7	\$111.37	\$115.62
Schane, Christopher	Showed up, sent home	One-hr show-up pay only	\$15.91	Pay 7	\$111.37	\$115.62
Hale, Gary	Showed up, sent home	One-hr show-up pay only	\$15.91	Pay 7	\$111.37	\$115.62
Bond, Musaali	Told to stay at home	No pay	\$17.51	Pay 8	\$140.08	\$145.42
Pence, Donald	Told to stay home	No pay	\$17.51	Pay 8	\$140.08	\$145.42
Filkins, Donald	Told to stay home	No pay	\$21.22	Pay 8	\$169.76	\$176.23
Weber, Robert	Told to stay home	Vacation day only	\$19.10	Restore 8 hour vacation	\$0.00	\$0.00
Fitch, Richard	Told to stay home	Vacation day only	\$26.21	Restore 8 hour vacation	0	\$0.00
Foerster, Darlene	Told to stay home	Vacation day only	\$16.45	Restore 8 hour	0	\$0.00

				vacation		
Frede, Klaus	Told to stay home	Vacation day only	\$26.10	Restore 8 hour vacation	0	\$0.00
TOTAL OWED				\$0.00	Backpay: \$1,519.38	Backpay with interest: \$1,577.31